उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CRA NO 698 सन् 2001

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANT: Stifen Ekka, S/o Gabrel Ekka, Caste Uraon, Aged 30 years, Occupation Agriculture, Village Rajoti, P.S. Narayanpur, District Jashpurnagar (C.G.)

-Versus-

RESPONDENT: State of Chhattisgarh, Through Police Station Narayanpur.

(Criminal Appeal under Section 374 (2) of the Cr.P.C.)

D.B.: - Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Sunil Kumar Sinha, JJ.

2-8-2007:-

Shri Suryakant Mishra, counsel for the appellant.

Smt. Anju Ahuja, Deputy Govt. Advocate for the State/respondent.

Oral judgment dictated on *Dais*.

L.C. BHADOO, J.

This appeal is directed against the judgment of conviction and order of sentence dated 14-5-2001 passed by the 2nd Additional Sessions Judge, Fast Track Court, Jashpurnagar, in S.T. No.196/2000 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo imprisonment for 5 months.. However, learned Additional Sessions Judge acquitted the accused of the charge under Section 376 of the I.P.C.

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The case of the prosecution, in brief, is that Serafinus Ekka lodged a report Ex.P/1 in the police station Narayanpur on 23-6-2000 at about 9.40 a.m. to the effect that on 22-6-2000 Serafinus Ekka (PW-1), husband of deceased Sunita, went to the house of Helariyus for work. In the evening, after taking dinner at the residence of Helariyus, he returned at about 9 p.m. when he entered his bed room, he saw in the torch light that his wife was lying on the bed along with his daughter Rina. His daughter Rina was also sleeping. He saw that there was bleeding from the mouth, nose and temporal region of Sunita. Injuries were inflicted by the axe. His wife was unconscious. He provided water to her. He went to the house of Helariyus and informed him that his wife Sunita has been attacked with axe and she is unconscious. Helariyus also came to his house. After half an hour his wife Sunita succumbed to the injuries.

Merg intimation Ex.P/9 was given by Serafinus Ekka. After registration of the crime under Section 302 of the I.P.C., I.O. left for the scene of occurrence. He took into possession plain soil and blood stained soil from the place of occurrence. He prepared inquest Ex.P/10 on the body of the deceased. Site plan Ex.P/12 was prepared by I.O. Weapon of offence axe, one mat, 4 broken pieces of the bangles were seized under Ex.-P/2. Clothes of the deceased and hairs were seized under Ex.P/3. Hairs of the accused were seized under Ex.P/4. One Lungi and Chaddi were seized under Ex.P/5. The body of the deceased was sent for postmortem examination to the PHC Kunkuri under Ex.P/11 where Dr. S. Toppo (PW-4) conducted the postmortem, prepared postmortem report Ex.P/6 and opined that cause of death was haemorrhagic shock due to fracture of skull and face bones. Nature of death was homicidal.

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After completion of the investigation, charge sheet was filed against the accused in the Court of Chief Judicial Magistrate, Jashpurnagar who in turn committed the case to the Sessions Judge Raigarh from where learned Additional Sessions Judge received the case on transfer.

The prosecution in order to establish the charge against the accused examined 7 witnesses. Statement of the accused was recorded under section 313 Cr.P.C. in which he denied material appearing against him in the prosecution evidence, stated that at the time of the incident he was at Akhada (place where dance was being performed in the village). In reply to the question No.9 he has stated that it is correct that his brother informed Helariyus at the dancing place. He has denied the statement of PW-2 Karmela Minj that on any occasion he quarreled with Sunita.

Learned Additional Sessions Judge after hearing learned counsel for the respective parties, convicted and sentenced the accused as aforesaid. However, learned Sessions Judge acquitted the accused of the charge under Section 376 of the I.P.C.

We have heard learned counsel for the parties.

In this case, there is no direct or ocular evidence to connect the accused with the crime in question. The whole case rests on the circumstantial evidence. The circumstances are:-

(1) The accused used to reside with his brother in the house where crime in question was committed.

(2) Blood stained Lungi of the accused was seized under Ex.P/5.

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It is admitted position that the accused was residing with his brother. But the question remains as to whether at the time of commission of crime the accused was in the house or somebody saw him going out after the commission of crime. In this connection, PW-1 Serafinus Ekka, brother of the accused and husband of the deceased has been examined, who has stated that on the fateful day he went for work at the residence of Helariyus. At about 9 p.m. he went to the house of Johan. When he returned he saw that his wife was lying dead in the house, at that time, nobody was present in the house. There were injuries on the face and head of his wife. Therefore, he went to Helariyus and informed him about the death of his wife. One axe was lying near the dead body of his wife. He has stated that when he went to the house of Johan his elder brother and his wife were in the house. In cross-examination, he has stated that dancing place is at 10-15 yards from his house. He has further stated that if cries are raised from his house, then a person standing at the dancing place is able to listen the cries. At that time, there were large number of persons standing at the Akhada i.e. dancing place. Dance was going on. Before the death of his wife he took his meal at the residence of Helariyus. It is correct that there was no dispute between the accused and his wife. The accused had not given beating to his wife. It is correct that he along with Helariyus came to the house before the death of his wife. At that time, Stifen, the accused, brother of this witness was saying that he will also go to the dancing place. It is correct that when he and Helariyus went to the house of Helariyus for taking dinner, at that time, Stifen also left the house following them. The house of Helariyus is adjacent to their house. When he returned after taking dinner at the residence of Helariyus; Stifen was

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not at residence. One can reach from the house of Helariyus to his house within a period of 2-3 minutes. When after seeing body of his wife he went to the dancing place, his brother was standing there. PW-2 Karmela Minj, mother of the deceased and mother-in-law of Stifen, has stated that about 15 days prior to the incident, some quarrel took place between the accused and the deceased which was disclosed by his daughter to her. Thereafter the accused came and took his sister-in-law back. In cross-examination, this witness has stated that before the incident there was no quarrel between the accused and the deceased. PW-3 Helariyus Kujur has turned hostile and he has not proved recovery of lungi of the accused nor he has stated anything about the incident. From the evidence of PW-1 Serafinus Ekka it is not established beyond reasonable doubt that at the time of commission of crime the accused was at the residence of his brother, as he has himself stated that when he along with Helariyus left the house for taking dinner at the house of Helariyus, the accused also left the house following them. He returned and saw his wife in injured condition, thereafter, he went at the dancing place which was at a distance of 10-15 yards from the place of occurrence. The accused was standing there. Therefore, from this evidence, no conclusion can be arrived or no inference can be drawn that the accused was the person who attacked the deceased because there is no other evidence to show and establish that at the time of commission of crime the accused was at the residence of his brother.

The evidence of PW-2 Karmela Minj that the accused and the deceased quarreled 15 days prior to the date of the incident stands negatived by the evidence of husband of the deceased namely, PW-1

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Serafinus Ekka. In cross-examination, he has stated that there was no quarrel or dispute between the deceased and the accused.

As far as recovery of lathi stained with blood of the accused is concerned, in the first instance, there is no FSL report showing that any blood stain was found on the lungi of the accused. Secondly, in order to connect the accused with the crime in question, merely on the basis of blood found on the lungi of the accused was not sufficient. The prosecution was required to establish through serologist report that blood which was found on lungi of the accused was of the blood group of the deceased. There is no such evidence on record. There is no other evidence available on record which establishes complicity of the accused in the crime in question. Virtually there is no circumstantial evidence to connect the accused with the crime in question, neither motive nor any evidence establishes presence of the accused in the house at the time of commission of crime. The accused himself in his statement under Section 313 Cr.P.C. has stated that he was at dancing place. His brother PW-1 Serafinus Ekka has stated that when he along with Helariyus went to the house of Helariyus, the accused also left following them. Therefore, there is not an iota of evidence to connect the accused with the crime in question. The accused has been convicted merely on the basis of conjectures and surmises. Conviction of the accused under Section 302 of the IPC cannot be sustained.

In the result, the appeal succeeds. Conviction and sentence imposed upon the accused under Section 302 of the I.P.C. are set aside. He is acquitted of the said charge. He be released forthwith if not required in any other case, as he is stated to be in detention since 2000.

Barwej

Sd/-
L.C. BHADOO
Judge

Sd/-
Sunil Kumar Sinha
Judge